

AMENDED IN ASSEMBLY AUGUST 23, 2001

AMENDED IN ASSEMBLY JULY 14, 2001

AMENDED IN ASSEMBLY JUNE 29, 2001

AMENDED IN ASSEMBLY JUNE 13, 2001

AMENDED IN SENATE MAY 30, 2001

AMENDED IN SENATE APRIL 25, 2001

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**SENATE BILL**

**No. 773**

**Introduced by Senator Speier and Assembly Member Jackson**

(Principal coauthor: Assembly Member Alquist)

(Coauthors: Assembly Members Chan and Goldberg)

February 23, 2001

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An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Speier. Financial institutions: confidential consumer information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies, as specified.

This bill would enact the Financial Information Privacy Act of 2002, which would require a financial institution to provide specified notice to, and to obtain the consent of, a customer before disclosing to or sharing confidential consumer information, as defined, with any nonaffiliated 3rd party, subject to certain exceptions. The bill would

also require a financial institution to provide its customers with *a written form that allows the customer* the opportunity to request, *among other things*, that the financial institution refrain from sharing the confidential consumer information of the customer with an affiliate of the financial institution *or outside companies*. The bill would provide that if the customer does not make this request, the financial institution would be allowed to market its own products or services to that consumer provided that the use of the customer's confidential consumer information be disclosed solely for the marketing of the financial institution's products or services.

*This bill would provide that a financial institution shall not deny a consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share confidential consumer information with affiliates of the financial institution. The bill would require a financial institution to comply with the consumer's request regarding confidential consumer information within 45 days of receipt of the request.*

This bill would provide that the bill would not apply to disclosures between certain types of member-owned financial institutions and its affiliates provided the disclosure is primarily used for customer service purposes and not for marketing purposes.

This bill would also provide various civil remedies and administrative fines and civil penalties for negligent, or knowing and willful violations of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 1.2 (commencing with Section 4050)  
2 is added to the Financial Code, to read:

3

4 DIVISION 1.2. FINANCIAL INFORMATION PRIVACY  
5 ACT

6

7 4050. This division shall be known and may be cited as the  
8 Financial Information Privacy Act of 2002. This division shall  
9 become operative on July 1, 2002.

10 4051. (a) The Legislature intends for financial institutions to  
11 provide their customers notice and meaningful choice about how



1 consumers' personal information is shared or sold by their  
2 financial institutions.

3 (b) It is the intent of the Legislature in enacting the Financial  
4 Information Privacy Act of 2002 to afford persons greater privacy  
5 protection than those provided in Public Law 106–102, the federal  
6 Gramm, Leach, and Bliley Act, and that this division be  
7 interpreted to be consistent with that purpose.

8 4052. For the purposes of this division:

9 (a) “Confidential consumer information” means personally  
10 identifiable financial information (1) that a consumer provides to  
11 a financial institution to obtain a product or service from the  
12 financial institution, (2) about a consumer resulting from any  
13 transaction involving a product or service between the financial  
14 institution and a consumer, or (3) that the financial institution  
15 otherwise obtains about a consumer in connection with providing  
16 a product or service to that consumer. Any personally identifiable  
17 information is financial if it was obtained by a financial institution  
18 in connection with providing a financial product or service to a  
19 consumer, including the fact that a consumer is a customer of a  
20 financial institution. Confidential consumer information does not  
21 include publicly available information that is lawfully made  
22 available to the general public from (1) federal, state, or local  
23 government records, (2) widely distributed media, or (3)  
24 disclosures to the general public that are required to be made of  
25 federal, state, or local law, except that confidential consumer  
26 information shall include any list, description, or other grouping  
27 of consumers, and publicly available information pertaining to  
28 them that is derived using any nonpublic personal information  
29 other than publicly available information, but shall not include any  
30 list, description, or other grouping of consumers, and publicly  
31 available information pertaining to them that is derived without  
32 using any confidential consumer information.

33 (b) “Personally identifiable financial information” includes  
34 all of the following:

35 (1) Information a consumer provides to a financial institution  
36 on an application to obtain a loan, credit card, or other financial  
37 product or service.

38 (2) Account balance information, payment history, overdraft  
39 history and credit or debit card purchase information.

1 (3) The fact that an individual is or has been a customer of a  
2 financial institution or has obtained a financial product or service  
3 from a financial institution.

4 (4) Any information about a financial institution's consumer if  
5 it is disclosed in a manner that indicates that the individual is or has  
6 been the financial institution's consumer.

7 (5) Any information that a consumer provides to a financial  
8 institution or that a financial institution or its agent otherwise  
9 obtains in connection with collecting on a loan or servicing a loan.

10 (6) Any information collected through an Internet cookie or an  
11 information collecting device from a Web server.

12 (7) Information from a consumer report.

13 (c) "Financial institution" generally means any institution  
14 engaging in financial activities as described in Section 1843(k) of  
15 Title 12 of the United States Code and doing business in this state.  
16 The term "financial institution" does not include the Federal  
17 Agricultural Mortgage Corporation or any entity chartered and  
18 operating under the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001  
19 et seq.), provided that the entity does not sell or transfer  
20 confidential consumer information to a nonaffiliated third party.  
21 The term "financial institution" does not include institutions  
22 chartered by Congress specifically to engage in a proposed or  
23 actual securitization, secondary market sale, including sales or  
24 servicing rights, related to a transaction of the consumer, as long  
25 as those institutions do not sell or transfer confidential consumer  
26 information to a nonaffiliated third party.

27 (d) "Affiliate" means any person or entity that, directly or  
28 indirectly, controls, is controlled by, or is under common control  
29 with another person or entity.

30 (e) "Nonaffiliated third party" means any entity that is not an  
31 affiliate of, or related by common ownership or affiliated by  
32 corporate control with, the financial institution.

33 (f) "Consumer" means an individual who obtains or has  
34 obtained a financial product or service from a financial institution  
35 that is to be used primarily for personal, family, or household  
36 purposes, or that individual's legal representative.

37 (g) "Control" means the direct or indirect possession of the  
38 power to direct or cause the direction of the management and  
39 policies of another entity. Control includes any of the following:

40 (1) ownership or power to vote 25 percent or more of the

1 outstanding shares of any class of voting security of a company,  
2 acting through one or more persons, (2) power in any manner over  
3 the election of a majority of the directors, or of individuals  
4 exercising similar functions, or (3) the power to exercise a  
5 directing influence over the management of policies of a company.

6 (h) “Necessary to effect, administer, or enforce” means the  
7 following:

8 (1) The disclosure is required, or is a usual, appropriate, or  
9 customary method to carry out the transaction or the product or  
10 service business of which the transaction is a part, and record or  
11 service or maintain the consumer’s account in the ordinary course  
12 of providing the financial service or financial product, or to  
13 administer or service benefits or claims relating to the transaction  
14 or the product or service business of which it is a part, and includes  
15 the following:

16 (A) Providing the consumer or the consumer’s agent or broker  
17 with a confirmation, statement, or other record of the transaction,  
18 or information on the status or value of the financial service or  
19 financial product.

20 (B) The accrual or recognition of incentives or bonuses  
21 associated with the transaction that are provided by the financial  
22 institution or another party involved in providing the financial  
23 service or product.

24 (2) The disclosure is required or is a lawful method to enforce  
25 the rights of the financial institution or of other persons engaged  
26 in carrying out the financial transaction or providing the product  
27 or service.

28 (3) The disclosure is required, or is a usual, appropriate, or  
29 customary method for insurance underwriting at the consumer’s  
30 request, for reinsurance purposes, or for any of the following  
31 purposes as they relate to a consumer’s insurance:

32 (A) Account administration.

33 (B) Reporting, investigating, or preventing fraud or material  
34 misrepresentation.

35 (C) Processing premium payments.

36 (D) Processing insurance claims.

37 (E) Administering insurance benefits, including utilization  
38 review activities.

39 (F) For internal research purposes.

40 (G) As otherwise required by federal or state law.



(4) The disclosure is required, or is a usual, appropriate, or customary method, in connection with the following:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means.

(B) The transfer of receivables, accounts, or interests therein.

(C) The audit of debit, credit, or other payment information.

(i) “Financial product or service” means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to financial activity under subsection (k) of Section 1843 of Title 12 of the United States Code (the United States Bank Holding Company Act of 1956). Financial service includes a financial institution’s evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(j) “Clearly and conspicuously” means displayed in a manner that is readily noticeable, readable, and understandable to consumers. Factors to be considered in determining whether a notice or disclosure is clear and conspicuous include prominence, proximity, absence of distracting elements, and clarity and understanding of the text disclosure.

(k) “Widely distributed media” means publicly available information from a telephone book, a television or radio program, a newspaper or a Web site that is available to the general public on an unrestricted basis.

4053. (a) A financial institution shall not disclose to, or share a consumer’s confidential consumer information with, any nonaffiliated third party unless the financial institution has provided written notice to the consumer to whom the confidential consumer information relates and unless the financial institution has obtained a written or electronic consent acknowledgment from the consumer that authorizes the financial institution to disclose or share the confidential consumer information. *A financial institution shall not deny a consumer a financial product or a financial service because the consumer has not provided the consent required by this subdivision to authorize the financial*

1 *institution to disclose or share his or her confidential consumer*  
2 *information with any nonaffiliated third-party.*

3 (b) (1) A financial institution may not disclose confidential  
4 consumer information to an affiliate unless the financial institution  
5 clearly and conspicuously discloses annually, commencing on  
6 July 1, 2002, to the consumer in writing pursuant to Section 4054  
7 that the information may be disclosed to an affiliate of the financial  
8 institution. Pursuant to this disclosure the consumer shall be  
9 provided an opportunity, before disclosure of information, ~~30~~ 45  
10 days from the date of postmark of the notice to direct that the  
11 confidential consumer information not be disclosed to an affiliate.  
12 *A consumer may direct at any time that his or her confidential*  
13 *consumer information not be disclosed to an affiliate. When a*  
14 *consumer directs that confidential consumer information not be*  
15 *disclosed, that direction is in effect until otherwise stated by the*  
16 *consumer. A financial institution shall not deny a consumer a*  
17 *financial product or a financial service because the consumer has*  
18 *directed pursuant to this subdivision that his or her confidential*  
19 *consumer information not be disclosed to an affiliate. A financial*  
20 *institution may elect to comply with the requirements of*  
21 *subdivision (a) with respect to disclosure of confidential consumer*  
22 *information to an affiliate.*

23 (2) (A) A financial institution shall comply with a consumer's  
24 directions concerning the sharing of his or her confidential  
25 consumer information within 45 days of receipt by the financial  
26 institution.

27 (B) The following form shall be sent by the financial institution  
28 to the consumer so that the consumer may make a decision  
29 regarding the sharing of his or her confidential consumer  
30 information:

31  
32 **IMPORTANT PRIVACY CHOICES FOR CALIFORNIANS**  
33

34 *Under California law, you have a right to restrict the sharing of*  
35 *your financial information within our family of companies*  
36 *regarding your consumer purchases, account balances, and other*  
37 *personal information. We must also get your permission to share*  
38 *your financial information outside our family of companies. To*  
39 *exercise your choices call this toll-free telephone number \_\_\_\_\_,*  
40 *contact us via the Internet, or mark and sign the form below and*





1 *send it back to us in the self-addressed postage paid envelope.*

2  
3 *YOU MAY RETURN THIS FORM AT ANY TIME AND YOUR*  
4 *CHOICES WILL REMAIN IN EFFECT UNLESS YOU REQUEST*  
5 *A CHANGE. HOWEVER, IF WE DO NOT HEAR FROM YOU*  
6 *WITHIN 45 DAYS, WE MAY SHARE YOUR FINANCIAL*  
7 *INFORMATION WITHIN OUR FAMILY OF COMPANIES BUT*  
8 *WE MAY NOT SHARE YOUR FINANCIAL INFORMATION*  
9 *OUTSIDE OUR FAMILY OF COMPANIES.*

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10  
11  
12 *Please mark your choices below. See the enclosed for further information.*

13  
14 *If you want to maximize your privacy protection under California law:*

15  
16 ☐ *I do not want you to share my financial information within your*  
17 *family of companies or with outside companies.*

18  
19 *If you want to authorize the sharing of information, indicate your privacy*  
20 *choices below:*

21  
22 ☐ *I want you to share my financial information such as my address,*  
23 *telephone number, purchases, account balances and other personal*  
24 *information with outside companies.*

25  
26 ☐ *You may share my financial information but I do not wish to be*  
27 *marketed through:*

28  
29 \_\_\_\_\_ *Telephone*      \_\_\_\_\_ *Mail*      \_\_\_\_\_ *E-mail*

30 *Name:* \_\_\_\_\_ *Account Number:* \_\_\_\_\_

31  
32 *Signature:* \_\_\_\_\_

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33  
34  
35 (c) ~~When a financial institution without affiliates~~ *with no more*  
36 *than five affiliates and collective assets of up to and including \$1*  
37 *billion enters into an agreement with a third party to offer, on an*  
38 *exclusive basis, a financial service or financial product to its*  
39 *customers, it may share a consumer's confidential consumer*  
40 *information on an exclusive basis with the third party that offers*



the financial service or financial product in the name of the financial institution, provided that the offer clearly states the name of the financial institution ~~without affiliates~~ that is a party to the making of the offer, and provided that the third party is prohibited from disclosing or otherwise using the customer information except as necessary to provide information about the financial service or financial product. For purposes of this subdivision, “third party” means financial institutions as defined in subdivision (b) of Section 4052. For purposes of this ~~section~~ *subdivision*, “exclusive basis” means a single outside service or product offered for each separate category of financial service or financial product provided in the name of the financial institution ~~without affiliates~~ *with no more than five affiliates and collective assets of up to and including \$1 billion*. Agreements entered into pursuant to this subdivision shall be subject to the requirements of subdivision (b) of this section.

(d) If, pursuant to subdivision (b), the consumer declines to direct that confidential consumer information not be disclosed to an affiliate, then a financial institution may be allowed to market its own products or services to that consumer, provided that any confidential consumer information disclosed in the marketing of the financial institution’s own products or services be disclosed solely to administer the marketing of the financial institution’s own products or services and not for any other purpose.

4054. (a) A financial institution that proposes to disclose or share a consumer’s confidential consumer information shall provide a written notice to the consumer that describes (1) the specific types of information that would be disclosed or shared, (2) the general circumstances under which the information would be disclosed or shared, (3) the specific types of persons or businesses that would receive the information, and (4) the specific proposed types of uses for the information.

(b) A financial institution shall provide notices and consent acknowledgments to consumers as separate documents that are easily identifiable and distinguishable from other documents that otherwise may be provided to a consumer.

4055. (a) This division shall not apply to disclosures between a member-owned financial institution and its affiliates, or between like affiliates, provided that the disclosure is primarily for customer service purposes and not for marketing purposes, and

1 that the financial institution meets all of the following  
2 requirements:

3 (1) A majority of the financial institution's customers are  
4 members of the United States military services, veterans of the  
5 United States military services, and current or former spouses of  
6 these persons and the primary purpose of the financial institution  
7 is to serve these persons.

8 (2) The financial institution and its affiliates are in compliance  
9 with Title V of the federal Financial Services Modernization Act.

10 (3) Customers of the financial institution and its affiliates are  
11 informed in writing on an annual basis of the opportunity to opt out  
12 of information sharing among the institution and its affiliates for  
13 marketing purposes.

14 (b) For purposes of this section, "marketing purposes" means  
15 for use in unsolicited telemarketing, unsolicited direct mail, or  
16 unsolicited commercial electronic mail for the primary purpose of  
17 encouraging the purchase or rental of, or investment in, property,  
18 goods, or services. For purposes of this section, "marketing  
19 purposes" shall not include communications to a person with that  
20 person's prior express invitation or permission, or in response to  
21 a communication from such person.

22 4056. (a) This division shall not apply to information that is  
23 not personally identifiable to a particular person.

24 (b) Sections 4053 and 4054 shall not prohibit the release of  
25 confidential consumer information under the following  
26 circumstances:

27 (1) The confidential consumer information is necessary to  
28 effect, administer, or enforce a transaction requested or authorized  
29 by the consumer, or in connection with servicing or processing a  
30 financial product or service requested or authorized by the  
31 consumer, or in connection with maintaining or servicing the  
32 consumer's account with the financial institution, or with another  
33 entity as part of a private label credit card program or other  
34 extension of credit on behalf of such entity, or in connection with  
35 a proposed or actual securitization or secondary market sale,  
36 including sales of servicing rights, related to a transaction of the  
37 consumer.

38 (2) The confidential consumer information is released with the  
39 consent of or at the direction of the consumer.

40 (3) The confidential consumer information is:



1 (A) Released to protect the confidentiality or security of the  
2 financial institution's records pertaining to the consumer, the  
3 service or product, or the transaction therein.

4 (B) Released to protect against or prevent actual or potential  
5 fraud, identity theft, unauthorized transactions, claims, or other  
6 liability.

7 (C) Released for required institutional risk control, or for  
8 resolving customer disputes or inquiries.

9 (D) Released to persons holding a legal or beneficial interest  
10 relating to the consumer.

11 (E) Released to persons acting in a fiduciary or representative  
12 capacity on behalf of the consumer.

13 (4) The confidential consumer information is released to  
14 provide information to insurance rate advisory organizations,  
15 guaranty funds or agencies, applicable rating agencies of the  
16 financial institution, persons assessing the institution's  
17 compliance with industry standards, and the institution's  
18 attorneys, accountants, and auditors, provided that the information  
19 obtained is not used for any other purpose.

20 (5) The confidential consumer information is released to the  
21 extent specifically required under other provisions of law and in  
22 accordance with the Right to Financial Privacy Act of 1978 (12  
23 U.S.C. Sec. 3401 et seq.), to law enforcement agencies, including  
24 a federal functional regulator, the Secretary of the Treasury with  
25 respect to subchapter II of Chapter 53 of Title 31, and Chapter 2  
26 of Title I of Public Law 91-508 (12 U.S.C. Secs. 1951-1959), the  
27 California Department of Insurance, or the Federal Trade  
28 Commission, and self-regulatory organizations.

29 (6) The confidential consumer information is released (A) to a  
30 consumer reporting agency in accordance with the Fair Credit  
31 Reporting Act (15 U.S.C. Sec. 1681 et seq.), or (B) from a  
32 consumer report reported by a consumer reporting agency,  
33 provided that the information obtained is not used for any other  
34 purpose.

35 (7) The confidential consumer information is released in  
36 connection with a proposed or actual sale, merger, transfer, or  
37 exchange of all or a portion of a business or operating unit if the  
38 disclosure of confidential consumer information concerns solely  
39 consumers of such business or unit, provided that customers of an  
40 acquired, sold, merged, transferred or partially or fully exchanged

1 business or operating unit are notified of their desire to disallow  
2 the sharing of any confidential consumer information and given 30  
3 days after the completion of the sale, merger, transfer or exchange  
4 of all or a portion of a business or operating unit to communicate  
5 their preference to the remaining entity. During this 30-day period,  
6 customers of the acquired entity shall not have their confidential  
7 consumer information disclosed except as provided elsewhere in  
8 this subdivision. The notice referenced in this provision shall be  
9 substantially the same format as that delineated in Section 4054,  
10 and shall explicitly refer by name both the entity with whom the  
11 customer initially established the relationship and the name of the  
12 remaining business entity.

13 (8) The confidential consumer information is released to  
14 comply with federal, state, or local laws, rules, and other  
15 applicable legal requirements; to comply with a properly  
16 authorized civil, criminal, or regulatory investigation or subpoena  
17 or summons by federal, state, or local authorities; or to respond to  
18 judicial process or government regulatory authorities having  
19 jurisdiction over the financial institution for examination,  
20 compliance, or other purposes as authorized by law.

21 (9) When a financial institution is reporting a known or  
22 suspected instance of elder or dependent adult financial abuse or  
23 is cooperating with a local adult protective services agency  
24 investigation of known or suspected elder or dependent adult  
25 financial abuse pursuant to Article 3 (commencing with Section  
26 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and  
27 Institutions Code.

28 4056.5. (a) The restrictions on disclosure and use of  
29 confidential consumer information, and the requirement for  
30 notification, disclosure, and opportunity for the consumer to either  
31 direct that the confidential consumer information not be disclosed  
32 or provided prior written consent, as provided in this division, do  
33 not apply to any person or entity that meets paragraph (1) or (2)  
34 except when confidential consumer information is or will be  
35 shared with an affiliate or third party.

36 (1) The person or entity is licensed in one or both of the  
37 following categories and is acting within the scope of the  
38 respective license:

39 (A) As an insurance agent, licensed pursuant to Chapter 5  
40 (commencing with Section 1621), Chapter 6 (commencing with



1 Section 1760), or Chapter 8 (commencing with Section 1831) of  
2 Division 1 of the Insurance Code.

3 (B) Is licensed to sell securities by the United States Securities  
4 and Exchange Commission.

5 (2) The person or entity meets the requirements in paragraph  
6 (1) and has a written contractual agreement with another person or  
7 entity described in paragraph (1) and the contract clearly and  
8 explicitly includes, but is not limited to, the following:

9 (A) The rights and obligations of the parties in the insurance or  
10 securities transaction.

11 (B) An explicit limitation on the use of confidential consumer  
12 information about a consumer to transactions authorized by the  
13 contract and the requirements contained in this division.

14 (C) The transactions specified in subparagraph (B) fall within  
15 the scope of activities permitted by the licenses of the parties.

16 (b) The restrictions on disclosure and use of confidential  
17 consumer information, and the requirement for notification and  
18 disclosure provided in this division, shall not limit the ability of  
19 insurance agents and brokers to respond to written or electronic,  
20 including telephone, requests from consumers seeking price  
21 quotes on insurance products and services.

22 4057. (a) In addition to any other remedies available at law,  
23 any consumer may bring an action against any financial institution  
24 that negligently discloses or shares confidential consumer  
25 information concerning him or her in violation of this division, for  
26 either or both of the following:

27 (1) Nominal damages of one hundred dollars (\$100). In order  
28 to recover under this paragraph, it shall not be necessary that the  
29 plaintiff suffered or was threatened with actual damages.

30 (2) The amount of actual damages, if any, sustained by the  
31 consumer.

32 (b) (1) In addition, any financial institution that negligently  
33 discloses or shares confidential consumer information in violation  
34 of this division shall be liable, irrespective of the amount of  
35 damages suffered by the consumer as a result of that violation, for  
36 an administrative fine or civil penalty not to exceed two thousand  
37 five hundred dollars (\$2,500) per violation.

38 (2) (A) Any financial institution that knowingly and willfully  
39 obtains, discloses, or uses confidential consumer information in  
40 violation of this division shall be liable for an administrative fine

1 or civil penalty not to exceed twenty-five thousand dollars  
2 (\$25,000) per violation.

3 (B) Any financial institution that knowingly and willfully  
4 obtains, discloses, or uses confidential consumer information in  
5 violation of this division shall be liable upon a first violation, for  
6 an administrative fine or civil penalty not to exceed two thousand  
7 five hundred dollars (\$2,500) per violation, or upon a second  
8 violation for an administrative fine or civil penalty not to exceed  
9 ten thousand dollars (\$10,000) per violation, or upon a third or  
10 subsequent violation for an administrative fine or civil penalty not  
11 to exceed twenty-five thousand dollars (\$25,000) per violation.

12 (3) Any financial institution that knowingly and willfully  
13 obtains, discloses, or uses confidential consumer information in  
14 violation of this division for financial gain shall be liable upon a  
15 first violation for an administrative fine or civil penalty not to  
16 exceed five thousand dollars (\$5,000) per violation, or upon a  
17 second violation for an administrative fine or civil penalty not to  
18 exceed twenty-five thousand dollars (\$25,000) per violation, or  
19 upon a third or subsequent violation for an administrative fine or  
20 civil penalty not to exceed two hundred fifty thousand dollars  
21 (\$250,000) per violation and shall be subject to disgorgement of  
22 any proceeds or other consideration obtained as a result of the  
23 violation.

24 (4) Nothing in this subdivision shall be construed as  
25 authorizing an administrative fine or civil penalty under both  
26 paragraphs (2) and (3) for the same violation.

27 (c) This section shall become operative on and after July 1,  
28 2003.

29 4058. This division shall not be construed in a manner that is  
30 inconsistent with the federal Fair Credit Reporting Act (15 U.S.C.  
31 Sec. 1681 et seq.).

32 4059. The provisions of this division shall be severable, and  
33 if any phrase, clause, sentence, or provision is declared to be  
34 invalid or is preempted by federal law or regulation, the validity  
35 of the remainder of this division shall not be affected thereby.

